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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,893	11/09/2001	Anthony David Smith	Q65785	9198

7590 05/19/2005  
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EXAMINER

MULLEN, THOMAS J

ART UNIT PAPER NUMBER

2632

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/890,893

Applicant(s)

SMITH ET AL.

Examiner

Thomas J. Mullen, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. The amendment filed 3/16/05 has been fully considered.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1-12 are objected to under 37 CFR 1.75(a) for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, line 3, "communication" should be --communications--, in view of the numerous references to "audio communications device" later in claim 1 and in several dependent claims (it is noted that applicant did not make the suggested change to claim 1 which was set forth in the last Office action).

At the beginning of claim 2, "Access" should be --An access-- (note that the previous version of claim 2 contained this phrase).

Claim 6, line 2, "the data" lacks antecedent basis (note that this term was deleted from claim 1).

4. Claims 1 and 9-12 are rejected --  
under 35 U.S.C. 102(b) as being anticipated by either Hair et al (US 3673331) or Kunihiro (US 5014295),  
under 35 U.S.C. 102(a) as being anticipated by Wolf (US 5737393),  
under 35 U.S.C. 102(e) as being anticipated by any of Laitinen et al (US 6091826), Kanevsky et al (US 5953700) or Buhrmann (US 6405032).

Note in Hair et al, terminal 50 in Fig. 3 (col. 3, lines 34-64) of a "voice verification" system, comprising in part microphone 52 and ID card receptacle/reader 54. Data in the form of an "identifying signal", read from a card placed in reader 54, is transmitted to a central processing station (22 in Fig. 1); likewise, words spoken into microphone 52 become "voice data" which transmitted to a central processing station. Central station 22 collectively utilizes both types of "data" to process a retail transaction (for example). Thus, the electronic identification means 54 and the audio communication device 52 are inherently configured to

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"access a common physical communications system" (via the central station 22), i.e. an "access control" device or system.

Note in Kunihiro, handsets or cordless phones 1A-1H of a multi-channel access cordless telephone system (wherein a master station 2 sends access/calling data to, and polls, the various handsets--Abstract), each handset (Fig. 3) comprising in part a keypad 131 for generating "identifying codes" (col. 6, lines 41-42), and microphone 111, speaker 121 and intercom key 133 for operation in an "intercom mode" (col. 20, line 66). Elements 111, 121, 131 and 133 all interact with a microcomputer 140 to provide the functionality of the handset, see col. 6, line 7 to col. 7, line 11, and col. 20, line 65 to col. 21, line 41. Thus, the electronic identification means 131 and the audio communication device (111,121,133) are inherently configured to "access a common physical communications system" (via the microcomputer 140), i.e. an "access control" device or system.

Note in Wolf, a voice mail system featuring a "password input" (see the Abstract, lines 12-13; col. 2, lines 10-12; and col. 4, lines 39-62) and various "greetings" to be recorded in setting up the voice mail system (note in Fig. 1B, automatic voice response system 26, voice menu system 100, scripting engine 105, etc.), and to be played back during use of the system. The password input (requiring the telephone keypad) is an "electronic identification means", and the telephone receiver (audibly playing back the automatic messages generated by the voice response system, both before and after password input as appropriate) is an "audio communication device". Thus, the electronic identification means (password/keypad) and the audio communication device (telephone receiver) are inherently configured to "access a common physical communications system" (via the automatic voice response system 26), i.e. an "access control" device or system.

Note in Laitinen et al, loudspeaker unit LU (see Figs. 1 and 5 and col. 3, lines 56-67), comprising in part a loudspeaker LS and a smart card reader 61, both of which are in communication with a processor 55. A loudspeaker unit LU is placed in a shopping cart of a retail facility (see col. 9, lines 30-52); a retail customer inserts a personal "smart" card in the card reader 61, such that the loudspeaker LS provides "highly individualized information" to the customer based on "data" read from the smart card (at 61) and processed by the processor 55. Thus, the electronic identification means 61 and the audio communication device LS are

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inherently configured to "access a common physical communications system" (via the processor 55), i.e. an "access control" device or system.

Note in Kanevsky et al, personal computer or workstation 450 (Fig. 4), comprising in part a smart card reader 460 and the components of a portable processor 99 (Fig. 1--see col. 8, lines 9-13), which components include a microphone 100 (Kanevsky et al also mentions a "PC speaker"--col. 8, lines 33-34). PC 450 and/or processor 99 communicate with an automatic speech/speaker recognition (ASSR) server 200 (and other servers shown in Fig. 4), for providing voice authentication and password verification (note the arrows depicting the flow of information in Fig. 4); in particular, a user (when prompted) enters a "user ID", "smartcard serial number", etc. via card reader 460, and speaks "preset voice messages for authentication" (col. 8, lines 26-34) via microphone 100. Thus, the electronic identification means 460 and the audio communication device 100 are inherently configured to "access a common physical communications system" (via the server 200), i.e. an "access control" device or system.

Note in Buhrmann, personal communication device 10 (Fig. 1), comprising in part a keypad 14, a speaker 16 and a microphone 17. Device 10 communicates with a base station 20, voice messaging system 23, etc., in a voice mail-type system. Keypad 14 is an "electronic identification means" (see col. 2, line 66 to col. 3, line 10), and speaker 16 and microphone 17 form an "audio communication device"; when the user's identification is established, the user may then access his stored voice messages (using function keys 15a-f), to carry out various functions with respect thereto (as set forth in the Abstract, last 3 lines). Thus, the electronic identification means 14 and the audio communication device 16,17 are inherently configured to "access a common physical communications system" (via the voice messaging system 23), i.e. an "access control" device or system.

Regarding claims 9-12, the "device" set forth in any of Hair et al, Kunihiro, Wolf, Laitinen et al, Kanevsky et al or Buhrmann, as discussed above, may be inherently characterized as constituting (or being part of) a "control" or "monitoring" system; further, since these prior art systems are inherently "installed" in some manner, such installation inherently includes the step of installing the "device" set forth in any of Hair et al, Wolf, Laitinen et al, Kanevsky et al or Buhrmann, as discussed above.

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5. Claim 2 is rejected --

under 35 U.S.C. 102(b) as being anticipated by Hair et al,

under 35 U.S.C. 102(e) as being anticipated by either Laitinen et al or Kanevsky et al.

Note card readers 54 in Hair et al, 61 in Laitinen et al, and 460 in Kanevsky et al, all discussed above.

6. Claims 3 and 5 are rejected --

under 35 U.S.C. 102(a) as being anticipated by Wolf,

under 35 U.S.C. 102(e) as being anticipated by Buhrmann.

Regarding claim 3, note "keypad" (col. 2, lines 10-12) in Wolf, and 14 in Buhrmann, both discussed above. Regarding claim 5, it is considered inherent that in a "voice mail"-type system such as disclosed by Wolf or Buhrmann, a number of different "pre-stored audio clips" are used to either inform a caller of the status of the requested party, to prompt a caller to select an option from a recited menu, etc.

7. Claim 4 is rejected under 35 U.S.C. 102(b) as being anticipated by Kunihiro.

Note "intercom" (111,133) in Kunihiro, discussed above.

8. Claim 6 is rejected under 35 U.S.C. 102(a) as being anticipated by Wolf.

At least in Wolf, the "data" from the electronic identification means (password/keypad) and the audio communication device (telephone receiver) is inherently in a "format" that can be transmitted over a single "communications cable", in this case a telephone line (note PC 10 in Fig. 1A, which communicates with interactive voice mail/voice response (IVR) system 26 in Fig. 1B over a "phone line").

9. Claim 7 is rejected --

under 35 U.S.C. 102(b) as being anticipated by Kunihiro,

under 35 U.S.C. 102(a) as being anticipated by Wolf,

under 35 U.S.C. 102(e) as being anticipated by Laitinen et al.

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In each of the systems disclosed by Kunihiro, Wolf and Laitinen et al, the "access control device" is at least partially activatable or controllable by a "remote operator", note master station 2 in Kunihiro (mentioned above); IVR system 26 in Wolf (mentioned above); and the "CPU" in Figs. 1 and 3 of Laitinen et al.

10. Claim 8 is rejected --

under 35 U.S.C. 102(b) as being anticipated by Kunihiro,

under 35 U.S.C. 102(a) as being anticipated by Wolf,

under 35 U.S.C. 102(e) as being anticipated by either Kanevsky et al or Buhrmann.

It is an inherent aspect in the nature of at least the systems disclosed in Kunihiro, Wolf, Kanevsky et al and Buhrmann to utilize "bi-directional" audio communications.

11. Applicant's arguments filed 3/16/05 have been fully considered but they are not persuasive.

Applicant asserts that the phrase inserted into claim 1, wherein the electronic identification means and the audio communications device "access a common physical communications system", distinguish the claim from the cited art because (i) each of the references discloses a "wireless" system, which is "distinct from" a common physical communications system; and (ii) the term "access control device" as used in the specification "clearly refers to controlling access to an area or region" (emphasis original).

Regarding issue (i), even a "wireless" system is made up of "physical" components (transmitters, receivers, etc), and thus inherently constitutes a "physical" communications system; and, the overall system which is disclosed in each reference relied upon (or any other type of "system", for that matter) is inherently a "common" system to all of the components therein, including (in each reference relied upon) the electronic identification means and the audio communications device. Thus, the terms "common" and/or "physical" as used in claim 1 are not seen as distinguishing applicant's system as recited in the claims from the prior art systems relied upon. It is also pointed out that at least some of the references disclose a non-wireless system (e.g., Wolf).

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Regarding issue (ii), the language "controlling access to an area or region" is not found in the claims. Claimed subject matter, not the specification, is the measure of invention. Limitations in the specification cannot be read into the claims for the purpose of avoiding the prior art. In re Self, 213 USPQ 1,5 (CCPA 1982); In re Priest, 199 USPQ 11,15 (CCPA 1978). For that matter, the particular phrase "controlling access to an area or region" does not appear to be found in the specification per se. Further, it is pointed out that the term "access" is used twice in claim 1 as amended, once in the phrase "access control device" (preamble) and once in the limitation regarding the common physical communications system being "access(ed)" by both the electronic identification means and the audio communications device; thus, the meaning of "access" as this term is used in the claims clearly refers to the capability of electronic devices to send or receive signals in a communications system, not to whether an individual is allowed to enter an area or region.

Applicant further refers to page 5, lines 9-14 and page 6, lines 8-15 as providing support for the amendment to claim 1; however, it is unclear whether applicant is referring to the application as originally filed or to the substitute specification, and it is unclear in either case how these portions of the specification are particularly relevant to the added limitation. It is considered, however, that the original disclosure as a whole provides adequate support for the new claim language.

Regarding applicant's particular comments as to Buhrmann, the portion of Buhrmann referred to in the rejection (col. 2, line 66 to col. 3, line 10) teaches in part that once keypad 14 is used to initiate access to the system, "processor 11 generates user identification information...for user identification verification at the system"; thus Buhrmann clearly teaches an "electronic identification means" per se.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after



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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Mullen, Jr. whose telephone number is 571-272-2965. The examiner can normally be reached on Monday-Thursday from 6:30 AM to 4 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Wu, can be reached on (571) 272-2964. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2600.

TJM

  
Thomas J. Mullen, Jr.  
Primary Examiner  
Art Unit 2632